

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PABLO CHAVEZ,

Plaintiff,

v.

RAMIREZ, et al.,

Defendants.

Case No. 1:20-cv-01269-HBK (PC)

ORDER DENYING PLAINTIFF'S MOTION
TO APPOINT COUNSEL

(Doc. No. 15)

ORDER SUA SPONTE GRANTING
PLAINTIFF AN EXTENSION TO FILE
OBJECTIONS

JUNE 20, 2023, DEADLINE

Pending before the Court is Plaintiff's motion to appoint counsel. (Doc. No. 15). Plaintiff, a former state prisoner, is proceeding pro se on his initial complaint. (Doc. No. 1). The Court granted Plaintiff's application to proceed in this action *in forma pauperis* in this action. (Doc. No. 8). Plaintiff seeks appointment counsel because "he does not now [sic] what to do in these matters." (Doc. No. 15 at 1). Plaintiff also requests to re-open "Chavez v. KCJBM," "Chavez v. Cal Fire," and "Chavez v. KCJ" and seeks appointment of counsel to assist him in re-opening the three cases.

Request for Appointment of Counsel in the Instant Action

The United States Constitution does not require appointment of counsel in civil cases. *See Lewis v. Casey*, 518 U.S. 343, 354 (1996) (explaining *Bounds v. Smith*, 430 U.S. at 817, did not create a right to appointment of counsel in civil cases). Under 28 U.S.C. § 1915, this court has

1 discretionary authority to appoint counsel for an indigent to commence, prosecute, or defend a
2 civil action. *See* 28 U.S.C. § 1915(e)(1) (stating the court has authority to appoint counsel for
3 people unable to afford counsel); *see also United States v. McQuade*, 519 F.2d 1180 (9th Cir.
4 1978) (addressing relevant standard of review for motions to appoint counsel in civil cases) (other
5 citations omitted). However, motions to appoint counsel in civil cases are granted only in
6 “exceptional circumstances.” *Id.* at 1181. The court may consider many factors to determine if
7 exceptional circumstances warrant appointment of counsel including, but not limited to, proof of
8 indigence, the likelihood of success on the merits, and the ability of the plaintiff to articulate his
9 or her claims *pro se* in light of the complexity of the legal issues involved. *Id.*; *see also Rand v.*
10 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *withdrawn in part on other grounds on reh’g en*
11 *banc*, 154 F.2d 952 (9th Cir. 1998).

12 Plaintiff has not met his “burden of demonstrating exceptional circumstances.” *Jones v.*
13 *Chen*, 2014 WL 12684497, at *1 (E.D. Cal. Jan. 14, 2014). Plaintiff requests appointment of
14 counsel because he “he does not now [sic] what to do in these matters.” (Doc. No. 15 at 1). The
15 Court construes Plaintiff’s reasoning as a purported lack of knowledge on the law as it relates to
16 his case as well as a general lack of knowledge as to how to litigate a case. There are normal
17 challenges faced by *pro se* litigants and do not warrant appointment of counsel. *Siglar v.*
18 *Hopkins*, 822 F. App’x 610, 612 (9th Cir. 2020) (denying appointment of counsel because the
19 plaintiff’s “circumstances were not exceptionally different from the majority of the challenges
20 faced by *pro se* litigants.”). The undersigned acknowledges that while the assistance of counsel
21 may be helpful, the “relevant consideration is not one of convenience” but rather exceptionalness.
22 *Howard v. Hedgpeth*, 2010 WL 1641087, at *2 (E.D. Cal. Apr. 20, 2010).

23 Finally, Plaintiff explains that while he now has an address for mailing, he was previously
24 homeless and did not receive mail during the time he was homeless. Liberally construed, Plaintiff
25 is also requesting appointment of counsel because he was homeless. While the Court is
26 sympathetic to Plaintiff’s previous homelessness, the Court does not find that Plaintiff’s past
27 homelessness is an exceptional circumstance that warrants appointment of counsel. *Van Buren v.*
28 *Gee*, 2023 WL 2621345, at *2 (N.D. Cal. Mar. 23, 2023) (denying appointment of counsel

1 because plaintiff is temporarily homeless); *Webb v. NaphCare, Inc.*, 2022 WL 2192977, at *2
 2 (W.D. Wash. Jun. 16, 2022) (denying appointment of counsel, among other reasons, because
 3 plaintiff is homeless, unemployed, and indigent); *Mascorro v. City of San Diego*, 2021 WL
 4 5827110, at *2 (S.D. Cal. Dec. 8, 2021) (denying motion for reconsideration for appointment of
 5 counsel because plaintiff is homeless). Finally, on April 17, 2023, the Court screened Plaintiff's
 6 Complaint and found it did not allege a cognizable claim. (Doc. No. 11). Thus, Plaintiff cannot
 7 demonstrate "the likelihood of success on the merits" necessary to warrant appointment of
 8 counsel. *United States v. McQuade*, 519 F.2d at 1181.

9 As a precaution, the Court advises Plaintiff that on May 22, 2023, the undersigned issued
 10 Findings and Recommendations to dismiss this action because Plaintiff had failed to timely
 11 respond to the Court's April 17, 2022 Screening Order. (See Doc. Nos. 11, 13). Plaintiff was
 12 afforded fourteen days to file objections to the May 22, 2023, Findings and Recommendations.
 13 (Doc. No. 13 at 5). Instead of filing Objections, Plaintiff moved for appointment of counsel. Due
 14 to Plaintiff's pro se status, the Court sua sponte will grant Plaintiff an extension of time, until
 15 June 20, 2023, to file objections to the May 22, 2023, Findings and Recommendations, after
 16 which time the May 22, 2023, Findings and Recommendations be deemed submitted for
 17 consideration by the district court based on the record.

18 **Cases: "Chavez v. KCJBM," "Chavez v. Cal Fire," and "Chavez v. KCJ"**

19 Plaintiff also requests appointment of counsel to assist with reopening three cases:
 20 "Chavez v. KCJBM," "Chavez v. Cal Fire," and "Chavez v. KCJ." Plaintiff explains that he does
 21 not have the case numbers for the cases because he was homeless and did not receive mail.
 22 Although Plaintiff does not identify the case numbers, a review of the Court's dockets reveals the
 23 following cases filed by Plaintiff in this Court: Chavez v. Cal-Fire et al., Case No. 1:20-cv-
 24 00801-JLT-HBK (E.D. Cal. Jun. 8, 2020) and Chavez v. Kings County, Case No. 1-20-cv-00503-
 25 JLT-HBK (E.D. Cal. Apr. 8, 2020). If Plaintiff wishes to reopen these cases, he must file a
 26 motion, pursuant to Rule 60 of the Federal Rules of Civil Procedure, in each case. See Fed. R.
 27 Civ. P. 60. The Court cannot appoint him counsel in this case to assist Plaintiff with the
 28 reopening of his other cases.

Accordingly, it is **ORDERED**:

1. Plaintiff's motion for appointment of counsel (Doc. No. 15) is DENIED.
2. The Court sua sponte grants Plaintiff an extension of time, **until June 20, 2023**, to file objections to the May 22, 2023, Findings and Recommendations.

Dated: June 6, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE